

AMENDED IN ASSEMBLY MAY 23, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2438**

**Introduced by Assembly Member Diaz**

February 21, 2002

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An act to amend Section 1281.1 of, and to add Title 9.75 (commencing with Section 1299.20) to Part 3 of, the Code of Civil Procedure, and to add Section 3518.25 to the Government Code, relating to public employment relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2438, as amended, Diaz. Employer-employee relations: state employees: State Bargaining Unit 12.

Existing law provides that state employees have the right to self-organization, to form, join, or assist labor organizations, and to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the state employer, but do not have the right to strike or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

This bill would provide that, for State Bargaining Unit 12, Crafts and Maintenance, which includes maintenance workers for the Department of Transportation, if an impasse has been declared after the representatives of an employer and state employees have exhausted their mutual efforts to reach agreement over economic issues as defined within the scope of arbitration, and the parties are unable to agree to the appointment of a mediator, or if a mediator is unable to effect settlement of a dispute between the parties, the employee organization may request, by written notification to the employer, that their differences

~~be submitted to an arbitration panel. Each party would designate one member of the panel, and those members would designate the chairperson of the panel pursuant to specified procedures.~~

~~The arbitration panel would meet with the parties within 10 days after its establishment or any additional periods to which the parties agree, make inquiries and investigations, hold hearings, and take any other action, including further mediation, that the panel deems appropriate. Five days prior to the commencement of the arbitration panel's hearings, each of the parties would be required to submit a last best offer of settlement on the disputed issues as a package. The panel would decide the disputed issues separately, or, if mutually agreed, by selecting the last best offer package that most nearly complies with specified factors. There would then be a waiting period of 5 days prior to public disclosure, or a longer period if agreed to, during which the parties could mutually amend the decision. At the end of that period, the arbitration panel's decision, as amended by the parties, would be disclosed, and would be binding upon the parties.~~

~~This bill would provide that unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization shall receive prevailing wages not less than salaries received by their counterparts in larger local agencies based on a survey to be conducted by the Department of Personnel Administration and calculated in a specified manner. The bill would specify that the implementation of salary increases shall be contingent upon the appropriation of necessary funds in the annual Budget Act and would require implementation of the increases over a 3-year period, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 1281.1 of the Code of Civil Procedure~~
- 2 *SECTION 1. Section 3518.25 is added to the Government*
- 3 *Code, to read:*
- 4 *3518.25. (a) Employees in classifications in State*
- 5 *Bargaining Unit 12, Crafts and Maintenance, shall receive*
- 6 *prevailing wages not less than salaries received by their*
- 7 *counterparts in California's larger local agencies. The*

1 comparison shall be based on a survey to be conducted by the  
2 Department of Personnel Administration. Prevailing wages or  
3 salaries shall include employer payment of employee  
4 contributions to the California Public Employees' Retirement  
5 System or similar retirement program for those agencies. Salaries  
6 for those classifications and agencies shall be updated not less  
7 than once per year. The agencies and classifications included in  
8 the survey shall only be changed upon agreement between the  
9 Department of Personnel Administration and the recognized  
10 employee organization.

11 (b) The calculation of the prevailing wage lead or lag for  
12 state-employed Unit 12 shall be based on weighted average  
13 salaries of employees in the classifications in those agencies in the  
14 following manner: prevailing wages at the entry level shall be  
15 based on the bottom step of salary ranges and prevailing wages for  
16 the professional registration required, and full supervisor levels  
17 shall be based on the top step of the salary ranges. Other steps in  
18 the salary ranges and the prevailing wage for intermediate  
19 classifications and ranges between the entry and full supervisory  
20 levels shall be based on the procedures prescribed in this chapter.

21 (c) (1) Salaries for employees in State Bargaining Unit 12 and  
22 affiliated employees shall be increased as necessary to correspond  
23 to the timing of the prevailing wages received by local agency  
24 employees included in the survey, with adjustments in the state  
25 employee compensation occurring not less than once every 12  
26 months. In no event shall state employee salaries be reduced as a  
27 result of this provision. The Department of Personnel  
28 Administration and the recognized employee organization may  
29 negotiate salaries above the minimum level on any general,  
30 regional, specialty, classification, department, or other basis they  
31 choose.

32 (2) Implementation of subdivision (a) shall be phased in over  
33 three fiscal years commencing on July 3, 2003, as follows:

34 (A) Effective July 1, 2003, not less than one-third of the total  
35 salary increases as calculated pursuant to this section.

36 (B) Effective July 1, 2004, not less than two-thirds of the total  
37 salary increases as calculated pursuant to this section.

38 (C) Effective July 1, 2005, and in each and every subsequent  
39 year, the total amount of the salary increases as calculated  
40 pursuant to this section.

*(d) Except for the survey required to be conducted pursuant to subdivision (a), implementation of this section shall be contingent upon the appropriation of the necessary funds in the annual Budget Act.*

*is amended to read:*

~~1281.1. For the purposes of this article, any request to arbitrate made pursuant to subdivision (a) of Section 1299.4 or subdivision (a) of Section 1299.23 shall be considered as made pursuant to a written agreement to submit a controversy to arbitration.~~

~~SEC. 2. Title 9.75 (commencing with Section 1299.20) is added to Part 3 of the Code of Civil Procedure, to read:~~

~~TITLE 9.75. ARBITRATION OF STATE EMPLOYEE  
LABOR DISPUTES~~

~~1299.20. The Legislature hereby declares that the provisions of this title are intended to govern the resolution of impasses reached in collective bargaining between the state and employee organizations representing state employees over economic issues that remain in dispute over their respective interests. However, the provisions of this title are not intended by the Legislature to be used as a procedure to determine the rights of any state employee in any grievance initiated as a result of a disciplinary action taken by the state.~~

~~1299.21. This title shall apply to state employees in State Bargaining Unit 12.~~

~~1299.22. As used in this title:~~

~~(a) “Employee” or “state employee,” “employee organization,” and “employer” have the same meaning as defined in Section 3513 of the Government Code, subject to the limitation in Section 1299.21.~~

~~(b) “Scope of arbitration” means economic issues, including salaries, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials, and all other forms of remuneration.~~

~~1299.23. (a) If an impasse has been declared after the parties have exhausted their mutual efforts to reach agreement over matters within the scope of arbitration, and the parties are unable to agree to the appointment of a mediator, or if a mediator agreed~~

1 to by the parties is unable to effect settlement of a dispute between  
2 the parties after his or her appointment, the employee organization  
3 may, by written notification to the employer, request that their  
4 differences be submitted to an arbitration panel.

5 (b) ~~Within three days after receipt of the written notification,~~  
6 ~~each party shall designate a person to serve as its member of an~~  
7 ~~arbitration panel. Within five days thereafter, or within additional~~  
8 ~~periods to which they mutually agree, the two members of the~~  
9 ~~arbitration panel appointed by the parties shall designate an~~  
10 ~~impartial person with experience in labor and management dispute~~  
11 ~~resolution to act as chairperson of the arbitration panel.~~

12 (c) ~~In the event that the parties are unable or unwilling to agree~~  
13 ~~upon a third person to serve as chairperson, the two members of~~  
14 ~~the arbitration panel shall jointly request from the American~~  
15 ~~Arbitration Association a list of seven impartial and experienced~~  
16 ~~persons who are familiar with matters of employer-employee~~  
17 ~~relations. The two panel members may as an alternative, jointly~~  
18 ~~request a list of seven names from the California State Mediation~~  
19 ~~and Conciliation Service, or a list from either entity containing~~  
20 ~~more or less than seven names, so long as the number requested is~~  
21 ~~an odd number. If after five days of receipt of the list, the two panel~~  
22 ~~members cannot agree on which of the listed persons shall serve~~  
23 ~~as chairperson, they shall, within two days, alternately strike~~  
24 ~~names from the list, with the first panel member to strike names~~  
25 ~~being determined by lot. The last person whose name remains on~~  
26 ~~the list shall be chairperson.~~

27 (d) ~~State employees as defined by this chapter shall not be~~  
28 ~~permitted to engage in strikes that endanger public safety.~~

29 (e) ~~No employer shall interfere with, intimidate, restrain,~~  
30 ~~coerce, or discriminate against an employee organization or~~  
31 ~~employee because of an exercise of rights under this title.~~

32 (f) ~~No employer shall refuse to meet and confer or condition~~  
33 ~~agreement upon a memorandum of understanding based upon an~~  
34 ~~employee organization's exercise of rights under this title.~~

35 1299.24. (a) ~~The arbitration panel shall, within 10 days after~~  
36 ~~its establishment or any additional periods to which the parties~~  
37 ~~agree, meet with the parties or their representatives, either jointly~~  
38 ~~or separately, make inquiries and investigations, hold hearings,~~  
39 ~~and take any other action including further mediation, that the~~  
40 ~~arbitration panel deems appropriate.~~

~~(b) For the purpose of its hearings, investigations, or inquiries, the arbitration panel may subpoena witnesses, administer oaths, take the testimony of any person, and issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any subject matter before the panel.~~

~~1299.25. (a) The arbitration panel shall direct that five days prior to the commencement of its hearings, each of the parties shall submit the last best offer of settlement as to each of the issues within the scope of arbitration, as defined in this title, made in bargaining as a proposal or counterproposal and not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.23. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall separately decide on each of the disputed issues submitted by selecting, without modification, the last best offer that most nearly complies with the applicable factors described in subdivision (c). This subdivision shall be applicable except as otherwise provided in subdivision (b).~~

~~(b) Notwithstanding the terms of subdivision (a), the parties by mutual agreement may elect to submit as a package the last best offer of settlement made in bargaining as a proposal or counterproposal on those issues within the scope of arbitration, as defined in this title, not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.23. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall decide on the disputed issues submitted by selecting, without modification, the last best offer package that most nearly complies with the applicable factors described in subdivision (c).~~

~~(c) The arbitration panel, unless otherwise agreed to by the parties, shall limit its findings to issues within the scope of arbitration and shall base its findings, opinions, and decisions upon those factors traditionally taken into consideration in the determination of those matters within the scope of arbitration, including, but not limited to, the following factors, as applicable:~~

~~(1) The stipulations of the parties.~~

~~(2) The interest and welfare of the public.~~

1 ~~(3) The financial condition of the employer and its ability to~~  
2 ~~meet the costs of the award.~~

3 ~~(4) The availability and sources of funds to defray the cost of~~  
4 ~~any changes in matters within the scope of arbitration.~~

5 ~~(5) Comparison of matters within the scope of arbitration of~~  
6 ~~other employees performing similar services in corresponding fire~~  
7 ~~or law enforcement employment.~~

8 ~~(6) The average consumer prices for goods and services,~~  
9 ~~commonly known as the Consumer Price Index.~~

10 ~~(7) The peculiarity of requirements of employment, including,~~  
11 ~~but not limited to, mental, physical, and educational~~  
12 ~~qualifications; job training and skills; and hazards of employment.~~

13 ~~(8) Changes in any of the foregoing that are traditionally taken~~  
14 ~~into consideration in the determination of matters within the scope~~  
15 ~~of arbitration.~~

16 ~~1299.26. (a) The arbitration panel shall mail or otherwise~~  
17 ~~deliver a copy of the decision to the parties. However, the decision~~  
18 ~~of the arbitration panel shall not be publicly disclosed, and shall~~  
19 ~~not be binding, for a period of five days after service to the parties.~~  
20 ~~During that five-day period, the parties may meet privately,~~  
21 ~~attempt to resolve their differences and, by mutual agreement,~~  
22 ~~amend or modify the decision of the arbitration panel.~~

23 ~~(b) At the conclusion of the five-day period, which may be~~  
24 ~~extended by mutual agreement of the parties, the arbitration~~  
25 ~~panel's decision, as may be amended or modified by the parties~~  
26 ~~pursuant to subdivision (a), shall be publicly disclosed and shall~~  
27 ~~be binding on all parties, and, if specified by the arbitration panel,~~  
28 ~~be incorporated into and made a part of any existing memorandum~~  
29 ~~of understanding as defined in Section 3517.5 of the Government~~  
30 ~~Code.~~

31 ~~1299.27. Unless otherwise provided in this title, Title 9~~  
32 ~~(commencing with Section 1280) shall be applicable to any~~  
33 ~~arbitration proceeding undertaken pursuant to this title.~~

34 ~~1299.28. Unless otherwise agreed to by the parties, the costs~~  
35 ~~of the arbitration proceeding and the expenses of the arbitration~~  
36 ~~panel, except those of the employer representative, shall be borne~~  
37 ~~by the employee organization.~~

38 ~~SEC. 3. Section 3518.25 is added to the Government Code, to~~  
39 ~~read:~~

1     ~~3518.25.—If, after a reasonable period of time, the Governor~~  
2     ~~and the recognized employee organization fail to reach agreement,~~  
3     ~~either party may declare an impasse and submit items of dispute~~  
4     ~~to binding arbitration pursuant to Title 9.75 (commencing with~~  
5     ~~Section 1299.20) of Part 3 of the Code of Civil Procedure, if~~  
6     ~~applicable for that employee organization.~~

